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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,570	11/25/2002	Liam Michael O'Gallcobhair	1256-002-PWH	6871
21034	7590	11/18/2004	EXAMINER TAWFIK, SAMEH	
IPSOLON LLP 805 SW BROADWAY, #2740 PORTLAND, OR 97205			ART UNIT 3721	PAPER NUMBER

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/070,570	O'GALLCOBHAIR, LIAM MICHAEL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sameh H. Tawfik	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 16-42 is/are pending in the application.
- 4a) Of the above claim(s) 27-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-26 and 31-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I (claims 16-26 and 31-42) in the reply filed on 07/29/2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.

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(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The disclosure is objected to because of the following informalities: headings need to be inserted in the specification; for example "BACKGROUND OF THE INVENTION"; "BRIEF SUMMARY OF THE INVENTION"; etc.

Appropriate correction is required.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. For example "Process For Packaging Food Products".

### ***Claim Objections***

Claim 18 is objected to because of the following informalities: applicant need to amend claim 18 as follow:

(claim 18, line 21) delete "pots is" and instead insert --pots are--;

(claim 18, line 3) delete "lids is" and instead insert --lids are--; etc.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 16-26 and 31-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites the limitation "the package or packages" in line 13. There is insufficient antecedent basis for this limitation in the claim.

Regarding claims 16 and 19, the phrase "or" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-26 and 31-42 rejected under 35 U.S.C. 103(a) as being unpatentable over Garwood (5,103,618) in view of the Background of the invention.

Garwood discloses a process for packaging a food product comprising; advancing a base web of thermo-formable material to a forming station and thermoforming a portion of the web at the forming station into at least one pot (Figs. 7-9); and transferring the web with formed pot with the food product (Fig. 7; via 41); at the same time advancing a top webs (Fig. 7; via 42 and 61) to a punching station (Figs. 8 and 9) and punching at least one product dispensing aperture in the web (Figs. 18, 16, and 18; via aperture 125 and column 3, lines 8-12); and thereafter conducting the further steps of bringing the base and top webs together in register so that an area

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of top web defining a lid and having the punched aperture therein overlies a mouth of filled pot and sealing the lid to the pot to form a food package (Fig. 18); fixing a sealing member over the aperture at any point (column 3; line 13). Garwood does not disclose that "advancing the package or packages" to a cooling chamber and holding them suspended therein until the product in the package has solidified. However, applicant admits on the background of the invention that it is known to serve ice-cream dispenser, which is inherent that ice-cream is stored on cooling chamber. Alternatively, the examiner takes an official notice that advancing package to a cooling chamber and holding them suspended therein until the product in the package has solidified is old, well known, and available in the art to keep the food in the frozen temperature if need.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Garwood's process of packaging a food product by having the step of advancing the packaging of food product if needed by a cooling chamber and holding them suspended therein until the product in the package has solidified, as a matter of engineering design choice, to keep the food product frozen as needed.

Regarding claims 17 and 18: Garwood discloses that more than one pot is formed at the web at a time (Figs. 7 and 11); which a row, column, or array of pots are formed at each pass and simultaneously a corresponding number of lids is formed (Figs. 7 and 11).

Regarding claims 19, 22, 31, 32, and 41: Garwood discloses that in which the pot is deformable toward the lid to dispense the food product through the aperture in the lid and the lid "or" a portion thereof is provided with sufficient rigidity to enable the pot to be collapsed against it (Figs. 1-5; via aperture by un-sealing the top of the package). Alternatively, applicant in

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(Background of the invention; page 1, lines 15-17) admits that feeding product through an aperture of cup is available.

Regarding claims 20, 21, 23, 33, 34, and 36-40: Garwood does not disclose that the top web is fabricated into a truncated dome-shaped lid. However, the examiner takes an official notice that forming a lid in truncated dome-shaped is old, well known, and available in the art to give more space on the top of the container to add more product.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Garwood's process of packaging a food product by having the step forming a lid in truncated dome-shaped, as a matter of engineering design choice, to keep more food-product on the top of the container.

Regarding claims 24 and 42: Garwood discloses that in which a shoulder is formed adjacent the mouth of the pot for receiving the insert (Figs. 1-6; via side of the container).

Regarding claim 25: Garwood discloses that the packages are separated from the webs after the sealing of the aperture by cutting the area of webs between adjacent packages or groups of packages (Figs. 18 and 19).

Regarding claim 26: Garwood does not disclose that the packages are scored to enable individual packages or groups of packages to be snapped apart. However, the examiner takes an official notice that scoring or pre-cut between series of packages is old, well known, and available in the art to make it easy separating packages apart.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Garwood's process of packaging a food product by

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having the step of scoring between packages, as a matter of engineering design choice, to make the step of separating packages easy.

***Conclusion***

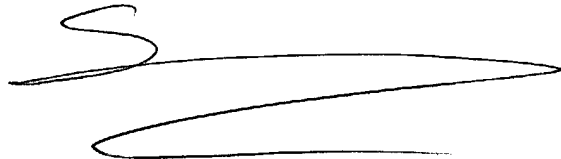
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is 571-272-4470.

The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sameh H. Tawfik  
Patent Examiner  
Art Unit 3721



ST.